

**Notice of Allowability**

Application No.

10/753,670

Examiner

Manuj Agawal

Applicant(s)

TRIOLO ET AL.

Art Unit

3764

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to interview 5/22/2006.
2. ☒ The allowed claim(s) is/are 1,4-6 and 8-20.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.  
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached  
1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.  
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.  
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |                                                                                                                                          |                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                              | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                   |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                     | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>5/22/2006</u> . |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date <u>5/6/2004</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                                           |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                               | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                                     |
|                                                                                                                                          | 9. <input type="checkbox"/> Other _____.                                                                      |

## **DETAILED ACTION**

### ***Priority***

Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed application, Application No. 10/281,413, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. The limitations of claims 9,12-20 are not present in the prior-filed application and are accordingly not entitled to the priority benefit.

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

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Authorization for this examiner's amendment was given in a telephone interview with Mr. Richard Erbe on 5/22/06.

The claims shall be amended as follows:

1. The limitations of claims 2,3,7 shall be incorporated into claim 1. The claim will now read as:

--A cranial massage helmet comprising:

a housing having an inner surface and an outer surface;

a plurality of tracks attached to said inner surface;

at least one wheel resiliently mounted on each of said tracks and movable along said tracks;

said at least one wheel is mounted in a wheel carrier;

a rack mounted on each of said tracks; and

at least one stepper motor for driving each of said wheels.--

2. (deleted)

3. (deleted)

4. The word "most" will be deleted and replaced with --a plurality--.

5. --At least one-- will be inserted in line 4 before the term wheel.

7. (deleted)

8. "7" will replaced with --1--.

9. "3" will be replaced with --1--. --At least one-- will be inserted in line 5 before the term wheel.

#### REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

Although there are a number of massage helmets in the prior art, none of them posses a plurality of tracks with a resilient wheel that moves along the said tracks and powered by a stepper motor. A rack on each of the said tracks, and well as a wheel carrier that is coupled to the said wheel is not present as well. No motivation exists to combine the structures of a massage helmet to devices outside the pertinent art that may contain the said structures. The use of a line, a number of frames, earphones, an amplifier, and the claimed controlling apparatus is unique to this application as well.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. US. 849,844. Laurence. Vibrator. A massage helmet.
2. JP 2002085503. Watanabe. Hanging Type Hair Growing Promotion Device by Scalp Massage.
3. US 5,081,986. Cho. Massaging and Combing Helmet for Insomnia.
4. US. 5,277,174. Schmidhauser. Scalp Massager.
5. DE 2815643.
6. US 3,716,048. Alonso. Head Massage Machine.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuj Agarwal whose telephone number is (571) 272-4368. The examiner can normally be reached on Mon to Fri 9:00 AM 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Manuj Agarwal  
Patent Examiner

MA



Danton D. DeMille  
Primary Examiner